IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE SEVENTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

**THE HON'BLE MR JUSTICE G. BIKSHAPATHY**

**and**
**THE HON'BLE MR JUSTICE P.S.NARAYANA**

**WRIT PETITION NO : 2058 of 2005**

Between:

Dr. K. Rajeswara Chary, S/o. K. Veeraiah, Medical Officer,
Government Ayurvedic Dispensary, Bira, Adilabad District, on transfer as Medical Officer, Government Ayurvedic Dispensary, Warangal.

**....PETITIONER**

AND

1 The Government of A.P., Rep by its Secretary,
Medical and Health Services, Secretariat, Hyderabad.
2 The Regl. Deputy Director, Indian Medicine &
Homeopathy Department, Warangal.
3 The Principal, BRKR Government Ayurvedic Medical College, Hyderabad.
4 The Deputy Director (Admn.) Indian Medicine & Homeopathy Department, A.P., Hyderabad.
5 Dr. K. Anasuya, Medical Officer, Government Ayurvedic Dispensary, Laxmipuram, Warangal, on deputation to Dr. BRKR Government Ayurvedic Medical College, Hyderabad. **.....RESPONDENTS**

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ, order or direction more in the nature of Writ of Certiorari calling for the records relating to the orders passed in O.A.No. 4423/2004, Dt.21-12-2004 on the file of A.P. Administrative Tribunal, Hyderabad and set aside the same and consequently declare the proceedings of the 2nd respondent bearing Proceedings No. 10913/E1/2004-49, dated 19-7-2004 as legal and valid and pass such other orders as necessary in the interests of justice

**Counsel for the Petitioner:MR.B.RANGANADH RAO**

**Counsel for the Respondent Nos.1 to 4: GP FOR SERVICES-1**

**Counsel for respondent No.5: B.S.A.Satyanarayana**

**The Court at the stage of admission made the following :**

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**O R D E R:** (PER GB.J)

1) This writ petition is filed by the petitioner assailing the order passed by the Andhra Pradesh Administrative Tribunal, Hyderabad in O.A.No.4423 of 2004, dated 21.12.2004.

2) The petitioner herein is an un-official respondent before the Tribunal. The

applicant before the Tribunal filed O.A.No.4423 of 2004 seeking to set aside the order passed by the Commissioner, Indian Medicine & Homeopathy Department, dated 19.07.2004, being contrary to the orders issued by the Government in G.O.Ms.No.512, dated 14.06.2004, G.O.Ms.No.767, dated 21.08.2002 & G.O.Rt.No.40, dated 17.01.2004 and for a consequential relief.

3) The applicant was working as Medical Officer in the Government Ayurvedic Dispensary, Laxmipuram, Warangal. While so, she applied for permission to prosecute Post Graduate Course at Dr.B.R.K.R. Government Ayurvedic College, Yerragadda, Hyderabad, for the academic years 2002-2005. Accordingly, the Government issued G.O.Rt.No.523, dated 25.06.2003, permitting the applicant and others to prosecute their Post Graduate Course at Dr.B.R.K.R. Government Ayurvedic College, Hyderabad, duly allowing them to draw their salaries against the posts from which they were deputed. Contrary to the above said proceedings, the applicant was transferred from the post of Medical Officer, Government Ayurvedic Dispensary, Laxmipuram, Warangal to Government Ayurvedic Dispensary, Bibra, Adilabad District, in the midst of the academic year. The said orders came to be challenged by the applicant in the said O.A., on the ground that she was sent on deputation withholding the post at Laxmipuram, Warangal District. Therefore, the transfer order is not sustainable in law.

4) The Tribunal after considering the matter, while upholding the transfer order, issued certain directions, which are extracted below:

> "*The impugned proceedings, posting the unofficial respondents, in place of the applicants, are upheld for the present. The unofficial respondent shall be allowed to hold the posts against which, the applicants were working prior to the issue of the impugned proceedings. However, immediately, after the applicants complete their post graduate courses and report for duty, they would be entitled to be re-posted in the posts, in which, they were working as on the date of issue of G.O.Rt.No.40, dated 17.01.2004, in respect of the applicant in O.A.No.4214/2004 and G.O.Rt.No.523, dated 25.06.2003 in respect of the applicant in O.A.No.4423 of 2004.*

*The present policy of the Government with regard to the protection of the posts held by the individuals deputed for the post graduate courses also needs to be reviewed in order to protect the interest of the administration as well as the individuals, perhaps on the lines ordered above.*

*It is also further ordered that, since the applicants in both the O.A.s, would be prosecuting their studies in Hyderabad, the official respondents shall make arrangements for drawal and payment of their salaries, strictly either from the Institution at which they are prosecuting their studies from the office of the Head of the department, located in Hyderabad".*

5) Aggrieved by the said order, the present writ petition has been filed by the petitioner who is an un-official respondent before the Tribunal.

6) The learned counsel for the petitioner submits that the post from which, the 5th respondent was deputed to study Post Graduate Course should not be kept un-filled by recruitment during the course of her study and the respondents have no right to post her at Warangal. It is also submitted that after completion of P.G. Degree, it is open for the authorities to post the 5th respondent, wherever the vacancy exists. The order of the Tribunal directing that after completion of P.G.Degree Course, the applicant shall report for the duty and she is liable to be re-posted to the post in which she is working as on the date of issue of G.O.Ms.No.40, dated 17.01.2004 is illegal and contrary to law.

7) The learned counsel for the 5th respondent submits that at request, the petitioner was posted from Government Ayurvedic Dispensary, Bibra, Adilabad District, to the Government Ayurvedic Dispensary, Laxmipuram, Warangal District, in a vacancy, which arose on account of deputation of the 5th respondent to prosecute her P.G.Degree Course at Hyderabad. It is also submitted that while the 5th respondent was working at Warangal, she was sent on deputation to Adilabad District. Therefore, the said post has to be kept vacant or reserved for her, whenever

she completes her P.G.Degree Course. He also submits that her salary is also not released on account of the transfer of the writ petitioner to Warangal. The learned counsel also submits that though she had no right to continue at Warangal, unless the petitioner reports back at Warangal, her pay will not be regulated in accordance with law.

8) The learned Government Pleader, however, submits that it is always open for the authorities to post the 5th respondent after completion of her P.G.Degree to the place where her services are required.

9) The issue that calls for consideration is whether the order of the Tribunal is sustainable in law.

10) We do not find any ground to interfere with the transfer order as it is valid, but the directions issued to the effect that the respondent shall report back at Warangal and she is entitled to be reposted at the place where she was working is not sustainable, inasmuch as posting of a candidate is an administrative requirement of the Department. Simply because she was sent on deputation from the place where she was working at Warangal, it cannot be said that she should be posted back at Warangal only. It is seen from the transfer order that at the request of the petitioner, he was transferred and posted at Warangal. Under those circumstances, we are inclined to modify the order to the effect that after completion of P.G.Course, it is open for the authorities to post her to any other place where her services are required. But, however, to enable her to draw her regular salary during the deputation period, it is open for the Government to issue appropriate orders in this regard.

11) The writ petition is disposed of. No costs.

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G.BIKSHAPATHY.J.,

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P.S.NARAYANA.J.,

Dt.07.03.2005

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To

1 Secretary, Government of A.P., Medical and Health Services, Secretariat, Hyderabad.
2 The Regional Deputy Director, Indian Medicine & Homeopathy Department, Warangal.
3 The Principal, Dr.BRKR Government Ayurvedic Medical College, Hyderabad.
4 The Deputy Director (Admn.) Indian Medicine & Homeopathy Department, A.P., Hyderabad.

5) Registrar of A.P.A.T., Hyderabad.
5. 2 CCs to the G.P. for Services-!, High Court of A.P., Hyderabad (OUT)